IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12806 of 1994

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMPETENT OFFICER & DEPUTY COLLECTOR

Versus

HIMATLAL C DAVE

Appearance:

1. Special Civil Application No. 12806 of 1994

Mr. K.T. Dave, AGP for Petitioners

MR RC KAKKAD for Respondent No. 1

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 25/11/2004

ORAL JUDGEMENT

1. This petition under Article 227 is filed by the Competent Officer & Deputy Collector, Jamnagar, along with the co-petitioner, Deputy Executive Engineer, Roads

& Building Department, City (R & B), Sub-Division, Jamnagar, challenging the judgment and order dated 30th November 1989 passed by the learned Assistant Judge, Jamnagar, in Regular Civil Appeal No.78 of 1983, whereby, the learned Judge has quashed and set aside the order of eviction passed in Eviction Case No.33 of 1982, dated 16th April 1983. The challenge under Article 227 of the Constitution in this writ petition is on the ground that the impugned order of the learned Assistant Judge is contrary to the facts and evidence on record. It is, further, stated that the conclusion arrived at by the Competent Authority in the order dated 16th April 1983 is based on the evidence produced on record by the petitioners, whereby, the respondent herein was given adequate opportunity to defend his case by issuing notices dated 27.8.1982, 13.9.1982, 4.10.1982 and 15.11.1982. Despite those opportunities having been given to the respondent, the respondent had submitted his written representation/reply and had requested that no further defence is to be led before the Competent Authority and, therefore, the Competent Authority had proceeded with the matter in just and proper manner and in accordance with law. The aforesaid fact is not appreciated by the learned Assistant Judge and, therefore, the order impugned in this writ petition dated 30th November 1989 requires to be quashed and set aside.

2. It is further submitted by the petitioners herein that the order of the learned Assistant Judge is contrary to law in as much as it was borne out from the facts of the case and on the record produced before the Competent Authority that the respondent had failed to vacate the official residence/premises given to him by the concerned Authority within the stipulated time as stated in the eviction notice and, therefore, the respondent was an unauthorised occupant and, therefore also, the impugned passed by the learned Assistant Judge reversing the finding of the Competent Authority is contrary to evidence on record, and requires to be quashed and set aside.

2.1 The impugned order passed by the learned Assistant Judge is challenged also on the ground that pendency of the representation by the unauthorised occupant, namely, the respondent herein, against the notice of eviction, and no decision on such representation by the concerned Authority, could not have been construed against the petitioners and, looking to the Regulations and the requirement of official accommodation by other senior government employees, the respondent herein ought to have vacated the premises on

expiry of the time given by the concerned Authority to vacate the premises. By not doing so, the respondent became an unauthorised occupant and was liable to evicted.

2.2 It is further contended that Sections 7 and 8 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1971, have no bearing, in as much as the petitioners had followed the procedure of law as envisaged under the Act and the adequate opportunities were given to the respondent.

2,3 It is further contended that requirement under the law, as envisaged, to evict the unauthorised occupant is properly followed by the Authority and, after issuance of notices, since the respondent was transferred from Jamnagar to Rajkot, he was required to vacate the premises allotted to him by the concerned Authority and, in spite of this fact, the respondent failed to comply with the said notice and continued to occupy the quarter unauthorisedly and, therefore, charging of economic rent of Rs.442/- per month by the concerned Authority is also just and proper and, therefore, the impugned order passed by the learned Assistant Judge dated 30th November 1989 requires to be quashed and set aside in exercise of power under Article 227 of the Constitution of India.

3. The respondent herein has filed the affidavit-in-reply. It is contended by the learned advocate for the respondent that the order dated 30th November 1989 passed by the learned Assistant Judge in Civil Appeal No.78 of 1983 is just and proper and, since the petitioner, who was initially transferred from Jamnagar to Rajkot in the year 1979, was retransferred to Jamnagar subsequently and, therefore, he continued to occupy the quarter allotted to him, and particularly, when he had made a representation to the concerned Authority to occupy the quarter was not decided, it cannot be said that the respondent was an unauthorised occupant and, therefore also, the order passed by the learned Judge is in accordance with law and it does not require any interference at the hands of this Court in exercise of power under Article 227 of the Constitution of India.

3.1 It is further contended by the learned advocate for the respondent that adequate opportunities were not given to the respondent and, due to exceptional circumstances of the respondent, he continues to occupy the quarter particularly when his son was studying in Jamnagar and his wife was sick and, therefore, the

respondent could have been allowed to occupy the quarter. It is further submitted that the eviction would result into undue hardship to the respondent, as it was impossible to get an official accommodation at the place of transfer. It is further contended by the learned advocate for the respondent that the respondent was not getting house rent allowance at the place of transfer, i.e. at Rajkot, and, therefore also, the order of economic rent to the tune of Rs.442/- per month was not just and proper. It is further submitted that the order eviction of quarter was also not just and proper and the same is rightly quashed and set aside by the learned Assistant Judge. The last contention of the learned advocate for the respondent was that, as per the Rules, if the quarter is allowed to a government servant, the government servant is to pay 10% of his basic pay and he was not granted HRA and, therefore, charging of economic rent is not proper, and the economic rent charged on the basis of rental value of the quarter is on the higher side and, in stead of 12% of the valuation, only 6% could have been charged, particularly in view of the fact that the quarter belongs to the Gujarat Housing Board and not to the Government.

4. I have heard learned advocates for the parties and perused the record including the order passed by the Competent Authority in Eviction Case No.33 of 1982 and the record produced therein. The Competent Authority has clearly recorded that the respondent was transferred from Jamnagar to Rajkot vide order dated 17th May 1979 and, thereafter, he had resumed his duties at Rajkot. In the the notice, it was clearly stated that, within 30 days of receipt of the notice, the respondent was required to vacate the quarters, failing which, the respondent would be charged with economic rent on the basis of Rules and Regulations. It is, further, recorded that the respondent was given notice on 27.8.1982 and was asked to explain his case on 13.9.1982, but, the respondent requested for further adjournment and, thereafter, the case was adjourned to 4.10.1982, 18.10.1982 and 15.11.1982. However, subsequently, in the interest of justice, the respondent was given time to appear before the Competent Authority on 28.2.1983.

4.1 On that day, the respondent remained present and requested the Competent Authority that the reply given by him in November 1982 to the Authority is to be treated as his explanation to the show cause notice and, further, he submitted before the Authority that no more submissions be made by him in this regard.

4.2 After recording the said submission of the respondent and his reply dated 13.9.1982, whereby, the respondent has explained that there were family circumstances causing hardship to the respondent, and, since the son of the respondent was studying in the College and it was a mid-term transfer, and, the wife of the respondent was sick, it was not possible for him to vacate the premises immediately and further the respondent was to retire in the next year and the respondent had been transferred from Rajkot to Jamnagar, the eviction proceeding be dropped against him.

4.3 Having considered the reply of the respondent, the Competent Authority has framed issues and decided that the respondent was unauthorisedly occupying the premises allotted to him and was liable to pay the economic rent from the date of notice dated 17.11.1980 at the rate of Rs.442 per month till the respondent vacates the premises. The aforesaid conclusion was arrived at by the Competent Authority after considering the reply submitted by the respondent and the evidence on record and it was observed that the explanation of the respondent cannot stand the scrutiny of law and there are number of government employees waiting in queue for their turn for allotment of government quarters and such employees will be deprived of, if the quarter is allowed to be occupied by the employees who are transferred to other places. The said rule for allotment of government quarter is carried out on the basis of the seniority list and the applications submitted by such employees, and non-allotment to such senior employees on priority basis and as per their turn would amount to injury to public cause and, therefore, the respondent had, unjustly and unauthorisedly, continued to occupy the said quarter and, accordingly, the order of eviction was passed by the Competent Authority charging economic rent of Rs.442/per month from the date of notice till vacation of the quarter.

4.4 The learned Assistant Judge, Jamnagar, in Regular Civil Appeal No.78 of 1983, wherein the order of the Competent Authority dated 16th April 1983 came to be challenged, upheld the submission of the learned advocate appearing for the appellant (respondent herein) and quashed and set aside the order of the Competent Authority dated 16th April 1983 mainly on the basis that:

(i) the respondent was not given adequate opportunity of hearing and especially a personal hearing;
(ii) the representation submitted by the respondent was pending before the Competent Authority;
(iii) charging of economic rent was improper;

and,
(iv) the respondent was again transferred to Jamnagar.
It is observed by the learned Assistant Judge that all the aforesaid facts were not taken into consideration by the Competent Authority. Thus, the appeal came to be allowed by the learned Assistant Judge quashing and setting aside the order of the Competent Authority.

5. Having gone through the record of the case, in my view, the order of the learned Assistant Judge, Jamnagar, appears to be contrary to the evidence on record produced before the Competent Authority in as much as the findings of the Competent Authority cannot be said to have been arrived at without application of mind or against the weight of evidence in as much as adequate opportunities were given to the respondent and, on different occasions the matter was adjourned and it was the respondent who had submitted a written reply in November 1982 and requested the Competent Authority to pass appropriate orders after taking into consideration his reply and he had no further explanation to offer. It is not the case of the respondent that his reply was not considered, but his grievance is that, without giving a personal hearing to him, the impugned order was passed by the Competent Authority evicting the respondent from the quarters. It is borne out from the record that the respondent himself submitted to the Competent Authority that, except his written reply of November 1982, he had no other ground or defence to canvass before the Competent Authority and, therefore, the Competent Authority after considering his reply had passed the order. Not only that, the Competent Authority had observed that pendency of the representation submitted by the respondent by the concerned Authority and no decision rendered by the concerned Authority on the said representation cannot be a ground to permit the respondent to continue to occupy the quarter, particularly in view of the fact that the seniority/priority list of the eligible government employees for allotment of quarter is maintained by the Authority and, if the employee, who is transferred to a different place, does not vacate the quarter, it causes lot of hardships to the employees, who are waiting for such allotment and, therefore, the stand taken by the respondent was not justified and, for all purposes, he was in occupation of the quarter unauthorisedly. The Competent Authority has, further, noted the fact that adequate opportunities were given to the respondent and, instead of charging the market rent, the Competent Authority has directed to recover the economic rent of Rs.442/- per month till vacation of the quarter by the respondent.

6. The findings arrived at by the Competent Authority on the basis of the evidence on record were not required to be upset by the learned Assistant Judge in the Regular Civil Appeal No. 78 of 1983 and, therefore, the learned Judge has committed an error of law by arriving at the conclusion that the respondent was not given a personal hearing. It was a case of not availing of the opportunity to represent the case, and, in spite of the fact that, on four different occasions, the respondent was asked to submit his reply and to defend his case, but to no avail. However, in any case, the Authority has taken into consideration the reply given by the respondent, and cogent reasons are given for not accepting the explanation of the respondent.

7. The learned Assistant Judge has also committed an error by observing that no decision on the representation of the respondent to allow him to occupy the quarter by the concerned Authority as a ground for reversing the finding of the Competent Authority. Such finding is also not warranted particularly when there was no malice or arbitrariness alleged against the concerned Authority and the action of issuance of notice of eviction by the respondent was based solely on the ground that other government employees, who were waiting in queue for allotment of the government quarters, could not have been deprived or denied of their legal right accrued to them by virtue of their turn in the list of allotment of government quarters.

7.1 The learned Assistant Judge has also committed an error by accepting the contention of the appellant (respondent herein) that proper procedure was not followed as envisaged under Sections 7 and 8 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1971, pertaining to payment of rent or damages in respect of public premises. In fact, what is ordered to be recovered is economic rent, and not market rent, to the tune of Rs.442/-, which is permissible under various government resolutions, when the government employee fails to vacate the quarter officially allotted to him. If any employee is transferred to a different place than the place where he has been allotted an official quarter and if he does not vacate the same, other government employees are deprived of that right to be considered for allotment of the said quarters and the said situation cannot be allowed to be perpetuated on account of not claiming HRA at the transferred placed or retransferred at the very same place after some time where the said person was allotted the quarter.

8. It is submitted by the learned advocate for the respondent that the charge of economic rent from the respondent at the rate of Rs.442/- per month from the date of notice of eviction, i.e. on 17th November 1980, till the date of vacating the quarter is on higher side in view of the fact that the respondent was not given HRA, which was permissible in accordance with the Rules, since the respondent had not vacated the premises. Today, it is submitted by the learned advocate for the respondent by filing an affidavit that the respondent had already handed over the possession of the quarter on 2nd April 1996, and he is 80 years old, and the amount of gratuity is also not paid on that ground alone. He, therefore, submitted that the economic rent of Rs.442/per month cannot be recovered from the respondent.

9. The learned Assistant Government Pleader for the petitioners has opposed the aforesaid submission made on behalf of the respondent.

10. In my view, looking to the valuation of the residential quarter, at that point of time, at Rs.42,900/-, and taking into consideration the rental value at 6%, and not 12%, the ends of justice would be met if economic rent at Rs.200/- per month is ordered to be recovered from the respondent from the date of receipt of notice of eviction, i.e. 17th November 1980 till the date of vacating the quarter i.e. 2nd April 1996. It is further directed that the amount of gratuity, which is withheld, be released by the Authority by deducting the aforesaid amount of economic rent of Rs.200/- per month, as stated hereinabove.

11. With the aforesaid directions and observations, the judgment and order dated 30th November 1989 passed by the learned Assistant Judge, Jamnagar, in Regular Civil Appeal No.78 of 1983, is quashed and set aside, with the modification with regard to economic rent as stated in the penultimate paragraph. The order of eviction passed in Eviction Case No.33 of 1982, dated 16th April 1983, is hereby confirmed with partial modification as above. Rule is made absolute to the aforesaid extent with no order as to costs.

(Anant S. Dave, J.)
(swamy)